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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Yvonne Gonzalez Rogers, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 21-00429-YGR
)	
RAY J. GARCIA,)	
)	
Defendant.)	
_____)	

Oakland, California
Wednesday, March 22, 2023

TRANSCRIPT OF SENTENCING PROCEEDINGS

APPEARANCES:

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Reported By: Pamela Batalo-Hebel, CSR No. 3953, RMR, FCRR
Official Reporter

Wednesday - March 22, 2023

10:00 a.m.

P R O C E E D I N G S

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THE CLERK: Your Honor, now calling CR 21-429, United States vs. Ray J. Garcia.

If counsel could please state their appearances for the record, starting with the Government.

MS. PRIEDEMAN: Good morning, Your Honor. Molly Priedeman and Andrew Paulson for the United States.

THE COURT: Good morning.

MR. LITTLE: Good morning, Your Honor. Kevin Little appearing on behalf of Ray Garcia.

THE COURT: Good morning.

THE PROBATION OFFICER: Good morning, Your Honor. Kyle Pollack for U.S. Probation.

THE COURT: Good morning. Glad you made it.

Well, Mr. Garcia, I need you to come to the podium, please. We are here for your sentencing, sir.

In preparation for these proceedings, I have reviewed and considered the presentence -- the revised presentence investigation report, which was prepared on February 9th, 2023, disclosed March 1st and revised March 14th.

I've also considered numerous filings: The United States' sentencing memorandum and the response to the objections; the Defense's sentencing memorandum, and all of the attachments,

1 extending about 133 pages. I have considered additional victim
2 statements, additional statements from family members of yours,
3 including your son.

4 We have discussed other filings, but those are the
5 principal ones.

6 Have you had an opportunity to review and consider those
7 documents and are you prepared to proceed?

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** All right. Then we will start with the
10 sentencing guidelines, which are always the first place that
11 the Court starts.

12 In this particular case, as a reminder, you have been
13 convicted of eight counts. Because they are similar, they are
14 grouped. The counts with respect to Counts 1 and 8 -- this is
15 for a violation of Title 18 of the United States Code at
16 Section 2243(b) -- the base offense is 14. This was for the
17 digital penetration of Melissa while you were in the bathroom
18 in the visitation room. It's increased by two points because
19 you knew or should have known that she was a vulnerable victim.
20 It's increased by two more points because of the obstruction of
21 justice and your lying about it to the officials. That gives
22 you an adjusted offense level of 18 for Count 1, Group -- for
23 Group 1, Counts 1 and 8.

24 Is there an objection to these calculations?

25 **MS. PRIEDEMAN:** No, Your Honor.

1 **THE COURT:** Is there an objection?

2 **MR. LITTLE:** Not other than previously stated. The
3 Defense agrees, Your Honor, that Mr. Garcia's base offense
4 level with respect to the group charges is 18.

5 **THE COURT:** All right. The Court adopts those for
6 purposes of Count Group 1.

7 Count Group 2 with respect to Count 2, sexual abuse of a
8 ward for a violation of Title 18 of the United States Code at
9 Section 2243(b), this is for conduct between December 2019 and
10 March 2020 for digital penetration again, base offense level of
11 14, increased enhancement of two points because the victim was
12 vulnerable, and increased enhancement of two points or two
13 levels because of the obstruction, again, adjusted offense
14 level of 18.

15 No objection?

16 **MS. PRIEDEMAN:** No, Your Honor. I would just note
17 that the obstruction enhancement applies not only for the false
18 statements provided to officials but also to his false
19 statements on the stand and other conduct described in the PSR.

20 **THE COURT:** All right.

21 Anything?

22 **MR. LITTLE:** None other than as previously stated,
23 Your Honor.

24 **THE COURT:** All right. So adjusted offense level is
25 18.

1 Count Group 3, Count 3, for a violation of Title 18 of the
2 United States Code at Section 2244(a)(4), this is for conduct
3 for touching Melissa's genitals and breasts in or about
4 February of 2020. This is a different violation. It starts
5 with a base offense level of 12, increased by two points or two
6 levels because she, the victim, was in the custody, care, or
7 supervisory control of the defendant, and, again, two more
8 levels because she was a vulnerable victim, two more levels
9 because of the obstruction. And these are all under Sentencing
10 Guidelines 2A3.4(a)(3), .4(b)(3), 3A1.1(b)(1), and 3C1.1.

11 That brings us to an adjusted offense level of 18. Any
12 objections?

13 **MS. PRIEDEMAN:** No, Your Honor.

14 **MR. LITTLE:** None other than previously stated,
15 Your Honor.

16 **THE COURT:** The Court adopts those offense levels as
17 well.

18 Count Group 4, Count 4, for sexual abuse of a ward, so for
19 a violation of Title 18 of the United States Code at Section
20 2243(b). This is with respect to the penetration of Melissa's
21 genital openings while in a warehouse. A base offense level of
22 14, increase of two levels because of the vulnerability of the
23 victim, increased another two levels because of the obstruction
24 of justice, for an adjusted offense level of 18.

25 Any statements?

1 **MS. PRIEDEMAN:** No, Your Honor.

2 **THE COURT:** Mr. Little?

3 **MR. LITTLE:** None other than as previously stated,
4 Your Honor.

5 **THE COURT:** All right. That's an 18 as well that the
6 Court adopts.

7 Count Group 5, Count 5, abusive sexual conduct -- contact.
8 This is for a violation of Title 18 of the United States Code
9 at Section 2244(a)(4). This relates to conduct with Maria, who
10 was caused to touch defendant's penis. They were in the
11 laundry room. The base level of 12, increased by two levels.
12 As with the other, the victim was in his custody, care, or
13 supervisory control. And increased two more levels given that
14 the victim was vulnerable, increased two more levels for
15 obstruction of justice, for an adjusted offense level of 18.

16 Any comments?

17 **MS. PRIEDEMAN:** No, Your Honor.

18 **THE COURT:** Any comments?

19 **MR. LITTLE:** Nothing other than what has already been
20 provided, Your Honor.

21 **THE COURT:** The Court adopts the level 18 based upon
22 those calculations.

23 Count Group 6, Count 6, abusive sexual contact, violation
24 of Title 18 of the United States Code Section 2244(a)(4). This
25 is for conduct on or about January 21st through July 2021 with

1 relation to touching Maria's breasts while she is inside of her
2 cell. Start with an offense level of 12. That's increased by
3 two levels because she was under the custody, care, or control
4 or supervisory control of the defendant, increased another two
5 levels because she's a vulnerable victim, increased another two
6 levels because of obstruction of justice. That brings us to an
7 adjusted level of 18.

8 Comments?

9 **MS. PRIEDEMAN:** No, Your Honor.

10 **MR. LITTLE:** None other than as already has been
11 stated, Your Honor.

12 **THE COURT:** The Court adopts those calculations.

13 Count Group 7, Count 7, abusive sexual contact. This is
14 for a violation of Title 18 of the United States Code at
15 Section 2244(a)(4). This relates to conduct on or about
16 March 2020 through -- and September 2020 with respect to Rachel
17 for touching her buttocks when they were in the electrical
18 shop. Start with a base offense level of 12, increased by two
19 levels given his role as warden, and she was under his custody,
20 care, supervisory control; increased another two levels because
21 she was a vulnerable victim; increased another two levels
22 because of obstruction of justice. That brings us to an
23 adjusted level of 18.

24 Any comments?

25 **MS. PRIEDEMAN:** No, Your Honor.

1 **MR. LITTLE:** None other than as has been stated,
2 Your Honor.

3 **THE COURT:** The Court adopts the adjusted level of 18.

4 Given that there are multiple similar counts, the way the
5 guidelines work is that we start with the greater of the
6 adjusted levels, which is 18. The offense level is increased
7 pursuant to the number of units, which is five in this case
8 given the variety of acts. That brings us to an adjusted level
9 of 23.

10 Any comments with respect to the adjusted offense level?

11 **MS. PRIEDEMAN:** No, Your Honor.

12 **MR. LITTLE:** No, Your Honor.

13 **THE COURT:** With an adjusted level of 23 and no
14 criminal history category, other than -- that is, no prior
15 criminal history, he has a criminal history category of 1 with
16 a guideline range of 46 to 57 months. Agreed?

17 **MS. PRIEDEMAN:** Yes, Your Honor.

18 **MR. LITTLE:** Yes, Your Honor.

19 **THE COURT:** All right. The Court adopts those
20 findings.

21 Let's review the objections.

22 You can have a seat for this part, Mr. Garcia.

23 As I noted last week, I do have concerns with respect to
24 what the Government, in my view, sought to do with the
25 additional evidence of incidents related to Mr. Garcia in terms

1 of the sentencing that they were asking for. I did ask the
2 Government and provide an opportunity to have an evidentiary
3 hearing with respect to those additional victims.

4 *United States vs. Valle*, 940 F.3d at 473 to -- and 479,
5 that's a Ninth Circuit case at 2019, talks about the standards
6 that apply when we're in -- when you're, in effect, asking for
7 an enhanced sentence, and it is based upon the logic of that
8 case that it seemed appropriate to advise you that if you were
9 going to ask for a sentence as high as you were and you were
10 relying heavily on that evidence, that there should be an
11 evidentiary hearing.

12 I understand from your notation or email on Monday that
13 you've chosen not to proceed with an evidentiary hearing.
14 Mr. Little was copied on the email.

15 So do you wish to be heard at this point?

16 **MS. PRIEDEMAN:** No, Your Honor. As the Government
17 expressed at last week's hearing, we do believe the
18 non-testifying witnesses' statements are procedurally -- are
19 substantively and procedurally reliable based on the Ninth
20 Circuit's case in *Franklin*, but we understand the Court's
21 ruling and will not be proceeding with an evidentiary hearing
22 at this time.

23 **THE COURT:** I don't want -- I don't want the public to
24 think that I don't think that there's some measure of
25 reliability, but I do think that the Constitution requires a

1 little bit more.

2 I have considered numerous victims' statements, and I have
3 considered numerous family letters and interviews. The Court
4 looks at the totality of all of those circumstances, and with
5 respect to those statements, I do not ignore them in their
6 entirety, but beyond viewing them as anything other than what I
7 would normally get, I don't think it's appropriate.

8 The presentence investigation report follows the
9 defendant. It doesn't necessarily include everything that the
10 Court considers at sentencing. It doesn't include all of the
11 victim statements. It doesn't include all of the family
12 letters. And so I treat it like that and nothing more, nothing
13 less.

14 Does anybody wish to be heard?

15 **MR. LITTLE:** No, Your Honor.

16 **MS. PRIEDEMAN:** No, Your Honor. Understood.

17 **THE COURT:** Okay. So let's go through this.

18 Many of the objections relate to a disagreement with the
19 scope of the testimony. All of those objections are overruled.
20 The testimony is the testimony. He's been convicted. He does
21 not sit here as an innocent man. He sits here as a felon.
22 That's what he is. So the fact that he may still disagree with
23 it is not relevant to me, and the objection is without basis.
24 They are overruled.

25 So starting at page 4, that relates to objection number 8,

1 9, 12 through 14. All of those are overruled.

2 He objects to paragraphs 19, 20, 24. Overruled.

3 He objects to all of the trial testimony of Melissa.

4 Overruled.

5 He objects to all of the testimony of Stephanie Millikin,
6 the BOP official. Overruled.

7 He objects to the trial testimony of Maria. All of those
8 objections are overruled.

9 He objects to the trial testimony of Rachel. All of those
10 are overruled.

11 He objects to the trial testimony of Christina. All of
12 those are overruled.

13 He objects to the trial testimony of Katrina. All of
14 those are overruled.

15 He objects to the interviews of the other inmates.

16 Now, Mr. Pollack, this begins at paragraph 92. So with
17 respect to the PSR, I'd ask that you remove paragraphs
18 beginning at 92 through, I believe -- so we have interviews of
19 CF. That's at 92 through 111. Those should be removed from
20 the PSR.

21 The interview of DGR begins at 112 through 127. Those
22 should be removed.

23 The interview of MM starts at 128 through 136. Those
24 should be removed from the PSR.

25 The interview of CRV at 137 through 145, those should be

1 removed from the PSR.

2 The interview of TG at 146 through 153, those should be
3 removed.

4 The objections with respect to his own testimony are
5 overruled.

6 Anything else with respect to objections, Mr. Little?

7 **MR. LITTLE:** No, Your Honor, other than what is stated
8 in our objection, which I believe the Court has covered to a
9 great extent.

10 **THE COURT:** What else do I need to rule on, if
11 anything?

12 **MR. LITTLE:** The other objections we made were to the
13 summary of Lieutenant Putnam's testimony at paragraphs 168 and
14 169.

15 **THE COURT:** Overruled. What else?

16 **MR. LITTLE:** And finally, we do not object to the
17 summary of the victim impact letters, but we object for the
18 same reason that we objected to paragraphs 92 through 153 for
19 their inclusion beyond the fact that they are letters related
20 to sentencing, for the same reason that we would object to
21 having the other interview statements considered without an
22 evidentiary hearing.

23 **THE COURT:** Okay. Is there something that I missed?
24 I thought I ruled on those objections.

25 **MR. LITTLE:** I think it's part and parcel of the same

1 thing, Your Honor.

2 **THE COURT:** Anything else I need to do with respect to
3 your objections?

4 **MR. LITTLE:** No, Your Honor.

5 **THE COURT:** Okay. Let's move to argument with respect
6 to an appropriate sentence.

7 We'll begin with the Government, and then we'll move to
8 the Defense.

9 You may proceed.

10 **MS. PRIEDEMAN:** Thank you, Your Honor.

11 I do just want to note that there are victims present in
12 the courtroom.

13 **THE COURT:** I understand I have victims who would like
14 to speak to the Court. That will be allowed. I understand
15 that there are individuals in support of the defendant who
16 would like to speak. That will be allowed. So that will all
17 be allowed. We'll be here for a bit.

18 **MS. PRIEDEMAN:** Understood. I will proceed,
19 Your Honor.

20 Defendant's conduct in this case is unquestionably
21 egregious. As the associate warden and the warden, Mr. Garcia
22 had nearly unchecked power over the inmates in his custody at
23 FCI Dublin. As Your Honor is aware, he could help them by
24 granting their motions for compassionate release or he could
25 punish them by transferring them far from their families or

1 sending them to solitary housing.

2 He also knew the vulnerabilities in the prison. He knew
3 where the surveillance cameras were and where they weren't. He
4 exploited that power over and over and over again by grooming
5 his victims for his own sexual gratification and by abusing
6 them by digitally penetrating one of them, groping them,
7 ordering them to take their clothes off, showing them pictures
8 of his penis, and in one victim's case, taking a graphic sexual
9 picture of her.

10 He also took many calculated and intentional steps to hide
11 what he had done, again relying on his power to cover his
12 tracks. As the Court heard at trial, he told the inmates he
13 was friends with the investigators in charge of investigating
14 sexual abuse. He told them that they are the ones that could
15 get in trouble if anyone had found out what happened. He told
16 one victim to destroy evidence, and he downloaded an
17 application on his phone to hide photographs.

18 In his role at FCI Dublin, he had the power to create a
19 culture of silence and abuse, and that's exactly what he did.
20 The victims in this case were terrified to come forward for a
21 long time.

22 The defendant's actions also set the tone for the rest of
23 the institution. Four individuals who worked under the
24 defendant have been charged with sexual abuse of inmates. And
25 when confronted by the FBI and DOJ OIG, the defendant lied

1 through his teeth about his abuse.

2 At trial, he doubled down. He perjured himself and
3 repeatedly attempted to try to blame the victims for his own
4 misconduct and concocted stories to try to explain away the
5 evidence that, frankly, defied common sense.

6 The defendant has also persisted in his complete lack of
7 remorse throughout this entire case. In his interview with the
8 probation department, he refused to even acknowledge that there
9 were victims in this case, telling probation that the victims
10 were just felons that wanted a benefit from the government.

11 The consequences for the defendant's victims have been
12 devastating. Many of the victims have suffered nightmares and
13 flashbacks, and they live in fear of retaliation, particularly
14 the inmates who are still incarcerated, some of whom are under
15 the custody of defendant's former colleagues and subordinates.

16 Defense counsel has submitted numerous letters and other
17 exhibits in support of its sentencing memorandum and many of
18 them point out that the defendant had a very successful career
19 at BOP. A lot of people pointed out that he knew the policies
20 better than anyone. The Government does not agree -- disagree
21 with that assertion, but that's not a mitigating factor that
22 would support a downward departure, as Defense is suggesting.

23 His experience at BOP, his knowledge of the policies is
24 what enabled him to commit the crimes in this case. It's also
25 what enabled him to get away with what he was doing for so

1 long. It's what makes his crimes that much more egregious.

2 Defense counsel has also suggested that the fact that he's
3 in law enforcement is a mitigating factor because his time
4 might be harder in custody. They cite to the *Koon* case for
5 that. But, again, it's the Government's position that his
6 position as law enforcement is an aggravating factor, not a
7 mitigating factor. It goes to the abuse of trust that he
8 exhibited by committing these crimes.

9 The Government agrees with the guidelines calculation in
10 this case, as we've already gone over, but it's also quite
11 obvious that the base offense level in this case radically
12 underrepresents the severity of the crime. That's the
13 Department of Justice's opinion, and it's also the opinion of
14 another court in this district who recently sentenced the
15 chaplain at FCI Dublin for sexual abuse. And as the Court is
16 well aware, the sentencing commission is also aware of the
17 discrepancy in the guidelines and is actively considering
18 increasing the base offense level for sexual abuse of a ward
19 from 14 to 22.

20 Under those new proposed guidelines, the guidelines range
21 in this case would be approximately 97 to 121 months. The
22 Government recognizes that those are not the current
23 guidelines, but we believe it's a helpful reference point when
24 thinking about what an appropriate sentence in this case is.

25 The proposed increased base offense level would better

1 account for the inherent coercion present in the prison
2 context, but it still would not account for the extreme
3 imbalance of power here, given the defendant's role as
4 associate warden and warden. The guidelines also don't account
5 for the pattern and extent of the defendant's actions in this
6 case.

7 Now just looking at the victims in this case who
8 testified, understanding the Court's ruling, the guidelines
9 don't capture one of those charged counts at all because it
10 simply caps out. It also doesn't account for the defendant's
11 conduct towards Christina or Katrina, and it also doesn't
12 account for a lot of the conduct that occurred toward the
13 charged victims. For example, it doesn't account for when the
14 defendant told one victim to put a candy cane in her vagina.
15 It doesn't account for when he penetrated her digitally after
16 that incident or when he took a picture of her naked body, took
17 it home with him, and cropped it to focus on her genitalia.

18 It also doesn't account for his instructions to numerous
19 victims to strip naked for him when he did his rounds. As one
20 victim testified, she felt uncomfortable doing it, and he told
21 her he would come back and waited for her to undress for him.

22 It also doesn't account for when he took screenshots of
23 another victim's naked body without her permission during a
24 video chat after she had explicitly told him she was
25 uncomfortable with naked photographs.

1 And it doesn't fully account for the defendant's
2 persistent and dogged efforts to cover his tracks by deterring
3 inmates from coming forward, lying to federal agents, lying to
4 the jury under oath, lying to probation, and continuing to
5 refuse to accept responsibility for his actions.

6 All of this conduct is relevant conduct in this case that
7 the Court can and should consider in reaching the appropriate
8 sentence.

9 The Government recognizes that the sentence it's
10 requesting is a significant one, but it's also a necessary and
11 appropriate sentence in this case. It's necessary not only
12 because of the defendant's heinous actions in this case but to
13 deter others from committing the same crimes committed by the
14 defendant.

15 The defendant thought he could get away with his conduct
16 because he thought he could silence his victims. He thought
17 they would never come forward, and if they did, he thought no
18 one would ever believe them. It's necessary in this case to
19 send a message to others that the defendant was wrong. There
20 are consequences for his actions. There are serious
21 consequences.

22 For all of those reasons, the Government submits that a
23 sentence of 180 months is appropriate in this case.

24 **THE COURT:** And as I understand it, you're also asking
25 for a term of supervised release for 15 years?

1 **MS. PRIEDEMAN:** Yes, Your Honor.

2 **THE COURT:** Mandatory assessment of \$800 and a fine of
3 20,000; correct?

4 **MS. PRIEDEMAN:** Yes, Your Honor. And we also believe
5 restitution is appropriate in this case. Two of the victims
6 have submitted requests for restitution after the Government
7 filed its sentencing memorandum.

8 **THE COURT:** And what's the amount on the restitution?

9 **MS. PRIEDEMAN:** Maria is requesting \$6,240, and
10 Melissa is requesting approximately \$5,280.

11 **THE COURT:** Can you tell me how you -- you made a
12 reference to the -- an adjusted or a different kind of
13 guideline calculation. I'm not sure how you got there.

14 **MS. PRIEDEMAN:** Yes, Your Honor. So under the new
15 proposed guidelines for sexual abuse of ward, the base offense
16 level would be 22, and you would add 2 for vulnerable victim
17 and 2 for obstruction, which would get to you a base offense
18 level of 26. But as I understand it, the sentencing commission
19 is not recommending an increase in the guidelines for the
20 abusive sexual contact charges, and so that adjusted offense
21 level would stay at 18, and so because it's 5 to 8 levels less
22 serious under the guidelines, each of those would count as half
23 a point rather than a full point.

24 **THE COURT:** So the enhancement would not be 5, it
25 would be what?

1 **MS. PRIEDEMAN:** Four, Your Honor.

2 **THE COURT:** So that would be 26 plus 4, for an
3 adjusted of 30, and that brings you to the 97 to 121?

4 **MS. PRIEDEMAN:** Yes, Your Honor.

5 **THE COURT:** Okay. Thank you. All right.

6 Mr. Little.

7 **MR. LITTLE:** Thank you, Your Honor.

8 Mr. Garcia stands before the Court today knowing that the
9 Court will and should take into account the seriousness of the
10 conduct for which he has been convicted. His hope, however, is
11 that he will be sentenced as an individual and not as a poster
12 boy or as an issue.

13 The Government has consistently stated throughout these
14 proceedings and again here today at sentencing that Mr. Garcia
15 was the person who fomented or created the environment at FCI
16 Dublin, making reference to other cases.

17 As compelling as that might sound to say, the facts don't
18 support that. Mr. Garcia did not come to FCI Dublin until
19 December of 2018. He was the associate warden for
20 approximately 18 months and then was the warden for
21 approximately the last 10 months of his tenure.

22 Mr. Garcia -- as the Court knows from other cases, the
23 allegations of sexual misconduct of other people who have been
24 charged and convicted in this case predate Mr. Garcia's tenure.

25 It's also a matter of public record that FCI Dublin has,

1 for many years, even going back to the 1990s -- has been a sick
2 institution, probably one that should have been closed long
3 ago.

4 Mr. Garcia believes that with respect to an appropriate
5 sentence, if he is given the individualized sentence that the
6 Constitution as interpreted by our Supreme Court indicates that
7 he is entitled to, that numerous factors in his past should be
8 considered as mitigating factors.

9 For instance, although the Government argues that
10 Mr. Garcia's status as a law enforcement officer being in a
11 position of trust is an aggravating factor, obviously the
12 guidelines speak to the contrary. The guidelines related to
13 this case specifically say that an abuse of position of trust
14 enhancement under 3B1.1(a) through (c) is not something that
15 should be applied because it is subsumed in the guideline
16 provisions themselves.

17 The Government is also asking the Court to sentence
18 Mr. Garcia based on a proposal that is currently pending with
19 the sentencing commission, and I think we all know from our
20 experience that those proposals many times do not resemble or
21 certainly do not mirror the ultimate recommendations, and it
22 simply is -- to assume that defendants, starting next year,
23 will receive sentences with a base offense level of eight
24 levels higher is merely speculation.

25 I understand the Court's comments at our last hearing, and

1 I read the Court's comments at other hearings, that Your Honor
2 feels that the guidelines do not accurately reflect or
3 appropriately reflect the seriousness of the conduct, and that
4 may well be the case, but to assume that there is going to be
5 an eight-level difference moving forward is -- is only
6 speculation. It also invites the Court to impose what would be
7 an ex post facto sentence on Mr. Garcia.

8 **THE COURT:** The guidelines are not binding. We all
9 know that; right?

10 **MR. LITTLE:** That's correct, Your Honor.

11 **THE COURT:** So I have discretion to do what I believe
12 is a reasonable, but not greater than necessary, sentence to
13 achieve the objectives of sentencing, and I don't want you to
14 misinform the public about what that means with respect to the
15 guidelines because they are not binding.

16 **MR. LITTLE:** That is correct, Your Honor. My point
17 only was that the Government is arguing as a 3553(a) factor, my
18 understanding, some potential amendment to that guideline, and
19 I'm just trying to point out the, in our view,
20 inappropriateness of making that particular argument.

21 Mr. Garcia has -- there is no indication that prior to
22 going to U.S. -- I'm sorry -- FCI Dublin in December '18 had
23 committed any misconduct, even though he had by that time been
24 in the Bureau of Prisons as an employee and as a supervisor for
25 29 years. I think Mr. Garcia himself, when he speaks later

1 today, will tell you that it's an assignment that he should not
2 have taken for a number of reasons, and his 29 years of
3 exemplary performance as an employee, as a family man, as a
4 father should not be discounted. The entire individual is
5 being sentenced today, not just the Ray Garcia that the
6 Government wants to portray.

7 There are numerous factors in the case law that indicate
8 that Mr. Garcia is entitled to, as part of the 3553(a) factors
9 which require a sentence sufficient but not greater than
10 necessary to serve the goals of sentencing, a departure on any
11 one of numerous basis, and I've already argued this at length
12 in our brief, but I'll just point out in general, the
13 guidelines --

14 **THE COURT:** Do you mean a variance as opposed to a
15 departure, or are you talking about a departure?

16 **MR. LITTLE:** Most of these are variances, Your Honor.
17 There is a 5K2.20(a) departure possible because of Mr. Garcia's
18 prior exemplary life before engaging in this criminal conduct,
19 and that's in the *United States vs. Smith* case from the Ninth
20 Circuit in 2004, but the -- but I believe the remainder of
21 these are all -- would be downward variances.

22 With respect to his age, Mr. Garcia is 55. I believe he
23 turns 56 in three months. That is a factor that the Court can
24 consider.

25 With respect to the lack of prior imprisonment and the

1 likely reformative effect of a shorter sentence, that's
2 something that the Court could consider.

3 The fact that Mr. Garcia will be a particularly vulnerable
4 target in prison, and that's supported by Mr. Flint's
5 declaration that we've provided as Exhibit E.

6 **THE COURT:** I don't understand how that's captured in
7 3553. You want me to assume that the Bureau of Prisons does
8 not take care of its inmates?

9 **MR. LITTLE:** Your Honor, it was considered in the *Koon*
10 case, and for the same reasons, we would ask the Court to
11 consider. I believe that Mr. Flint, a long-time employee and
12 supervisor and associate warden at the Bureau of Prisons, has
13 indicated, even with the best intentions, the difficulties that
14 Mr. Garcia will face in custody, not only based on his law
15 enforcement status, but as a law enforcement -- a former law
16 enforcement officer who is there based on being convicted for
17 sex crimes.

18 **THE COURT:** If the Bureau of Prisons' warden didn't
19 think that he or she could protect Mr. Garcia, they could put
20 him on home confinement, couldn't they?

21 **MR. LITTLE:** It would be an extraordinary measure,
22 but, yes.

23 **THE COURT:** So there are things that they can do.

24 **MR. LITTLE:** They could. I believe the program
25 statement that pertains to custodial assignment would make

1 Mr. Garcia's assignment to home confinement exceedingly
2 unlikely, but it certainly is not impossible.

3 **THE COURT:** And why is that?

4 **MR. LITTLE:** Because of his offense level, because of
5 the length of his sentence, because of the number of
6 convictions that he has, more likely than not he would be
7 assigned to either an FCI or a USP.

8 **THE COURT:** Okay. Proceed.

9 **MR. LITTLE:** With respect to Mr. Garcia's care, being
10 the primary caretaker for a son with special needs, with
11 respect to the central role he's played in his
12 multigenerational family, with respect to all of those factors,
13 those are things that the Court could consider in determining
14 what is the appropriate 3553(a) sentence.

15 Mr. Garcia, as we've requested in this case, we believe,
16 notwithstanding what the Government believes -- the Government
17 is asking for the maximum sentence for any defendant, that any
18 defendant could receive based on the charges for which
19 Mr. Garcia has been convicted, and as bad as the conduct that
20 Mr. Garcia got convicted of is, the charging statutes also
21 contemplate even more egregious conduct.

22 With respect to what we believe would be an appropriate
23 sentence, this is a case where we believe that the guidelines
24 do reflect due consideration for the seriousness of the offense
25 and the attendant circumstances, and as indicated in our

1 sentencing papers, we also are asking the Court to consider a
2 downward variance because of Mr. Garcia's likely vulnerability
3 to a sentence within Zone C of the guidelines that would make
4 him more likely for home imprisonment or some other alternative
5 placement.

6 With respect to the restitution issue, Your Honor, and the
7 fines --

8 **THE COURT:** Well, you've asked for 23 months, which is
9 Zone D. Are you now asking that it be reduced even further to
10 18 months?

11 **MR. LITTLE:** No, Your Honor. I'm sorry. Zone D.
12 It's a sentence of less than 2 years, 23 months.

13 And with respect to the fine, the fine is based on
14 Mr. Garcia's wife's income, which was considered by probation.
15 However, probation, I think, failed to consider that Ms.-- that
16 Mr. Garcia's spouse was not married to him at the time of these
17 offenses. That they are -- and I can represent to the Court
18 that they are pending divorce. And also her salary that she
19 receives is not free and clear. She has her own children and
20 other expenses that weren't contemplated by the probation
21 calculation of ability to pay.

22 And with respect to restitution, Your Honor, we'll submit
23 on that.

24 With respect to the 5,200 and some odd number that was
25 given by Ms. Priedeman, I received a letter that had some very

1 general outlines of what the proposed restitution would be for
2 that particular victim. I'm not aware of one that specifies a
3 particular number.

4 **THE COURT:** No. I've only received one -- one
5 request, the 6240. I've not received the other. We can talk
6 about restitution later.

7 **MR. LITTLE:** Those are -- those are my comments,
8 Your Honor. I -- I know that Mr. Garcia and -- is anxious to
9 address the Court and -- and we do have a few other people who
10 want to address the Court on his behalf.

11 **THE COURT:** Well, let's start there. We'll start
12 there.

13 **MR. LITTLE:** Very well. With Mr. Garcia?

14 **THE COURT:** No.

15 **MR. LITTLE:** Oh, sure.

16 **THE COURT:** With the others.

17 **MR. LITTLE:** Thank you, Your Honor.

18 **THE COURT:** Who would like to address the Court on
19 behalf of the Defense?

20 **MR. LITTLE:** Mr. Garcia's oldest sister, Elida, is
21 here. It's spelled E-L-I-D-I-A [sic].

22 **THE COURT:** Okay.

23 **MR. LITTLE:** Would you like her to speak from afar or
24 come up to the podium?

25 **THE COURT:** She should come up to the podium.

1 **MR. LITTLE:** Please pass forward.

2 **MS. STEWART:** Your Honor, my name is Elida Stewart.

3 **THE COURT:** Good morning. Could you spell your name
4 place.

5 **MS. STEWART:** Elida, E-L-I-D-A, S-T-E-W-A-R-T.

6 **THE COURT:** Okay. Thank you. Good morning.

7 **MS. STEWART:** As a representative for my family, I
8 wrote this letter to plead to the Court for leniency or
9 probation on behalf of my brother, Ray Garcia.

10 We are fully aware of the seriousness of the charges for
11 which my brother has been found guilty, and although we have
12 compassion for the victims, we want the Court to understand the
13 impact that losing our brother to the federal justice system
14 would do to our family.

15 It is because of our parents that I write this letter
16 today. They're both in their 70s. They both depend on my
17 brother to help them. He is at our dad's house regularly to
18 help with things around the house that our dad can no longer
19 do.

20 Ray often makes himself available for my mom to help, my
21 sister's move, or anything that requires heavy lifting, he's --
22 he's the one that's there for our family.

23 This -- for our family, the trial experience has taken a
24 toll on us emotionally. An extended sentence for my brother
25 would mean that our parents would never see their son outside

1 of prison ever again.

2 I also ask that the Court consider my nephew G., Ray's
3 special-needs son. G. is very close to his dad. G. respects
4 his dad, and they love each other so very much. Because of his
5 disability, our fear is how a long sentence with his father
6 away from home would negatively affect G.

7 G. does not express his emotions like a neurotypical
8 individual, and his disability makes it challenging for him to
9 understand himself and others but mostly how a fair justice
10 system can take away his dad for making a mistake.

11 Losing his father would be devastating to my nephew. It
12 would cause irreparable damage to his psyche. We, as a family,
13 beg the Court to consider that fact.

14 Lastly, I feel it doesn't serve the community to lock away
15 a non-violent family member. Ray spent his entire career
16 caring for individuals who committed heinous crimes with honor
17 and integrity, despite the jury's decision to the contrary.
18 Because of Ray's 30-year-plus career in law enforcement, he is
19 at risk for being targeted by the same individuals he protected
20 the community from.

21 My brother's life is here in California, so he poses no
22 flight risk. He is a taxpaying citizen. And any prison
23 sentence would just add to the burden and cost of the federal
24 bureau systems.

25 Therefore, as part of our leniency request, we, as a

1 family, are asking for Ray to be sentenced to an electronic
2 monitoring program or probation or as determined by the Court.

3 It is with much sincerity that we thank you for listening
4 to this letter and considering our request. Thank you.

5 **THE COURT:** Ms. Stewart, thank you for speaking. I
6 did -- again, I did read all the letters, and I'll have more to
7 say.

8 I can tell you he will serve a custodial sentence. I am
9 not going to just do electronic monitoring. I can't, in good
10 conscience, do that. I still have more to hear, but I do
11 appreciate that you all love him and that he's an important
12 part of your family. So thank you for speaking.

13 **MR. LITTLE:** Your Honor, I believe that that's the
14 only family member who is going to want to speak today.
15 Ms. Stewart spoke on behalf of the entire family.

16 **THE COURT:** All right. Let's hear from the victims.
17 Just make sure if you would state your name and spell it for
18 the record, please.

19 **KATRINA:** Thank you, Your Honor. My name is Katrina.

20 **THE COURT:** That's -- that's fine.

21 **KATRINA:** Okay. K-A-T-R-I-N-A.

22 Thank you for hearing us today, really, because coming
23 forward is very formidable, it's not only difficult. I admit,
24 there is a great deal of fear that comes along with it,
25 reporting prison rape. That it gets swept under the rug for

1 months or years is heartbreaking to the abused. As a ward of
2 the government, it was their job to protect me, and they
3 failed.

4 It still baffles me that how during the indictment, I went
5 from being victim to just proving the Government's case for
6 them.

7 However, being a ward of the federal government Bureau of
8 Prisons, it was their job to protect me, and they failed as
9 well. I believe that due to their leader Garcia setting a
10 standard of abusing inmates himself, all these cases have been
11 going on.

12 I haven't been able to transfer to a less corrupt place
13 because the Government needed me close by to come see you in
14 court, putting me -- putting the defendant again before my own
15 needs, not to mention I was still housed in the place and I'm
16 still housed in the place I was abused with the same people
17 still working there that sweep it under the rug and have
18 complete disregard for my safety, which ultimately -- sorry --
19 which ultimately leads to more abuse from other prison staff
20 based on Garcia's actions, as you heard in my testimony.

21 I was not seen as a name or a number to the Government but
22 as a sexual play toy or a piece of meat, while I was used,
23 degraded, humiliated, and sexually abused to gratify their
24 sexual desires. I understand I made a bad choice, which put me
25 in prison, and that's in the past, and I've done everything I

1 can and so many classes to better myself that I can assure you
2 my sentence did not come with a clause to include being
3 sexually abused by prison staff multiple times and multiple
4 staff members causing me PTSD, mental and emotional anguish,
5 and more.

6 My hope is that Ray Garcia will get a lengthy sentence and
7 help and much-needed, I feel, counseling moving forward and a
8 sentence that Your Honor feels is right for his crimes before
9 you today.

10 As I stand here today, I appreciate and thank you for all
11 of your help in putting an end to these matters.

12 I am happy to answer any questions you have for me. I did
13 want to let you know that we have been able to see -- the
14 TriValley Care has come to see us for outside psych help.
15 However, we're only allowed to see them five times. It usually
16 ranges around a half hour, 45 minutes each time, and then we
17 have to revert back to the staff at Dublin or whichever BOP
18 they might be at, which I don't feel is helpful.

19 Each time they come, they are different people. There is
20 no continuity of care. It's really, really re-traumatizing to
21 have to go through the whole thing again, which each person
22 that comes in -- no one has ever showed me credentials. I
23 haven't heard that any of them are actually licensed in that
24 profession, which is disconcerting and disheartening as well.

25 While the staff may be changing at Dublin, the culture

1 isn't. And the part that bothers me the most is regardless of
2 how he responds here in court today, there was no remorse shown
3 at all with his actions throughout the whole time. It was
4 always laughs and smiles and then boasting about it afterwards.

5 If you have any questions, I'm happy to answer them for
6 you.

7 **THE COURT:** I don't have questions.

8 There has been plenty of things, letters sent to me
9 about -- which suggests that BOP still has a lot of work to do
10 to get their house in order. There were, during the course of
11 this case, a number of the United States Congress congressional
12 officials, who seemed to be interested, including
13 Representative Swalwell, and to the extent that you've not
14 written them, perhaps you should consider writing to them,
15 because that's what they are there for, and I do think they're
16 concerned.

17 **KATRINA:** Okay. I will definitely do that. Thank
18 you.

19 **THE COURT:** All right. Anyone else?

20 **MS. PRIEDEMAN:** Yes, Your Honor.

21 **MELISSA:** Good morning, Your Honor.

22 **THE COURT:** Good morning.

23 **MELISSA:** At first I was terrified to be here.

24 **THE COURT:** Wait. I'm sorry. I'm sorry to interrupt,
25 but you do need to give me your name and spell it. Thank you.

1 **MELISSA:** Melissa, M-E-L-I-S-S-A.

2 **THE COURT:** Thank you.

3 **MELISSA:** At first I was terrified to be here, to face
4 you again. I never wanted to see your face or be anywhere near
5 you. The hell that you brought to my life is unconceivable,
6 but the more I thought about it and talked to my family about
7 it, the more I knew I had to be here. The only way I can put
8 this past me is to tell you in this court and anyone else who
9 is listening what happened to me and how it has affected me.
10 People like you need to be brought to justice.

11 You raped my mind, my soul. You molested my body. You
12 made my life a living hell in Dublin. The impact and scars you
13 left me will never heal. I have nightmares about what you did
14 to me. You were supposed to protect and serve; instead, you
15 are a predator and a pervert. You are a disgrace to the
16 federal government.

17 My family was the only people I trusted to tell what
18 happened to me. You listened to my phone calls. You watched
19 my video visits. You discussed my visits with me and even
20 spoke of my son to me. You stalked me for years and would hide
21 in the bushes outside to watch my every move.

22 You manipulated me and abused me for your perverted
23 pleasures. You showed me hundreds of pictures of your penis on
24 your phone. They made me sick. You demanded me for years to
25 be naked and take pictures of me and sexually assault me. You

1 played God with my life. You used me and abused me. You
2 tormented me. You sucked the life out of me, but I want you to
3 know that you have no more power over me.

4 You were supposed to lead by example, and you did not.
5 You said it was okay to rape us women and sexually assault us.
6 You covered up everything because you thought you had all the
7 power. Look at you now.

8 I have lived in fear every day. The anxiety you've given
9 me is unexplainable. I contemplated suicide because of the
10 trauma you put me through. I never felt safe in Dublin. Not
11 only did you sexually assault me and harass me, so did your
12 staff. But you set the example, didn't you, Garcia. What you
13 said goes. So it was okay for you and everyone else who worked
14 there to harass us, and no one would say anything about it.
15 You encouraged everything and made it your playground.

16 My family went through hell. I was not able to tell them
17 anything over the phone. I would just cry and scream and yell,
18 and they had no idea what was going on. I finally was able to
19 tell my sister in person. She spent countless hours helping
20 me, making phone calls. She was demoted at her job because it
21 took up so much of her time, but she was doing everything that
22 she could to help me and to relay information to the FBI.

23 I want you to look -- I want you to look me in the face
24 and apologize to me. I want you to look the FBI and Marilyn
25 Andrew in the face and apologize and take responsibility for

1 what you did.

2 I want justice to be served at its fullest. I want you to
3 be made an example of. This type of abuse needs to stop. Men
4 in power like you that prey on women who are locked in cages,
5 terrified and afraid to speak out to save themselves from
6 monsters like you, Garcia, you need to be stopped.

7 I pray I can heal from this. I pray that other women can
8 find the strength to do so, too.

9 I have no idea or how long, if ever, it will take to trust
10 any man or any man in law enforcement again. I fear
11 retaliation every day because of Garcia.

12 I went to prison to better myself. I thought I would be
13 safe and do my time in peace, but instead, I was put in the
14 hands of a sick predator.

15 You were the warden. You were supposed to supervise and
16 train staff and make sure all inmates were treated fair.
17 Instead, you did the exact opposite.

18 Your Honor, I am asking you to please take him away in
19 handcuffs today. He has had months to tie up all his loose
20 ends after being found guilty on all charges.

21 Thank you, Your Honor.

22 **THE COURT:** Thank you, Melissa.

23 Melissa, before you leave, I will let you know, just like
24 I let the others, I am not -- I do not intend to send him away
25 today. And I have reasons for that as well, but thank you for

1 speaking.

2 **MELISSA:** Thank you for letting me speak.

3 **THE COURT:** Anyone else?

4 **MS. PRIEDEMAN:** No, Your Honor.

5 **THE COURT:** Mr. Garcia, you have the right to address
6 the Court during your sentencing. Would you like to do so,
7 sir?

8 **THE DEFENDANT:** Good morning, Your Honor.

9 **THE COURT:** Good morning.

10 **THE DEFENDANT:** Do you need me to spell my name?

11 **THE COURT:** No.

12 **THE DEFENDANT:** Your Honor, I stand before you today
13 as a broken man. I couldn't be more shamed. I couldn't be
14 more sorry.

15 I need to explain to you how I got to this point.

16 Two years ago, I was a respected employee of the Bureau of
17 Prisons, and now I'm a convicted felon on my way to prison.

18 In December of 2018, I was assigned to Dublin and not an
19 assignment that I wanted, not an assignment that I asked for.
20 It's not even an assignment that I tried to accept, actually.
21 The records from the agency will show that on my walkthrough of
22 Dublin, I spoke to Warden Jenkins and advised him that I would
23 prefer to resign in December of -- I'm sorry -- retire in
24 December of 2018 than to work at Dublin because of difficulties
25 in my life and because of the reputation of the institution.

1 He implored me to reconsider and give him a year's worth of
2 work to establish a better correctional basis at that
3 institution.

4 My reasons for being reluctant were not just based on its
5 extremely poor reputation and long history of sordid conduct
6 but also because I knew it was a place that would test my
7 character and my difficulties. For reasons that I -- are
8 difficult to explain, I've always been a highly sexualized
9 person, even as a young man in my 30s, and obviously now. It
10 is an issue that I never dealt with as I was constantly busy
11 with my career and my family. I tried to always be responsible
12 and carry the burden of my family's needs, as well as the
13 Bureau's needs.

14 I always try to be the person who is there for my parents.
15 I didn't think to worry about my own issues or my own faults or
16 doing something to work on my problems because I typically
17 worked 60 or more hours a week, and it was my job to care for
18 my family and all of the staff at all the many institutions I
19 worked for.

20 I hated what I've become at Dublin. The record should
21 show I took every advantage of every detail that would assign
22 me away from that institution. I hate what it was making me
23 become and that I was headed down a road that was hurting other
24 people. I didn't show strength, discipline, or character.

25 I don't want to make this about myself more than I already

1 have. I am sorry beyond sorry to the women I've hurt or the
2 victims in this case. I don't refer to them by name, not out
3 of disrespect but as -- out of respect, as I've not earned the
4 right to call them by their first names.

5 I cannot imagine the pain and fear, shame that they've
6 gone through as a result of my actions. As a brother of four
7 sisters, I have always tried to protect them from harm. I had
8 no right or reason to act as I did.

9 I am very sorry that I could not take responsibility for
10 it sooner. I foolishly hoped that somewhere somehow the good
11 Lord would see a way to judge my good deeds and hard work over
12 30 years over the things that I had done wrong and that I would
13 avoid being in front of you here today. I thought that somehow
14 this would go away, but I was wrong, terribly wrong.

15 What I can tell you is that I intend on making the best of
16 my time in custody, and I'm finally going to work on myself
17 like I should have done many years ago. I am hoping to emerge
18 from this a better father to my son. I can only apologize to
19 him since I've put him in this terrible situation.

20 My son has special needs, and I am and I always tried to
21 be his anchor, his connection to the harshness the outside
22 world imposes on children with special needs, so I'm very
23 worried of what is going to happen to him. I love him more
24 than anything in this world, and it is unbearable to me to
25 think he is having to make his way through the world without

1 me. I will miss most of his growing-up years, but I also know
2 at the same time I've placed myself in this situation.

3 I am ashamed to be here admitting that I victimized women
4 who are victims and the witness -- I'm sorry -- who are the
5 victims in this case. They are commended for having the
6 courage to come forward.

7 And I wanted my friends and family here today because I've
8 been avoiding confronting my issues for far too long. I am
9 bringing on myself today the pain and embarrassment, the
10 humiliation that I always hoped to avoid, and I want them to
11 see it because if they're going to love the person who comes
12 out, they're going to have to accept the things I've done.

13 I cannot think of any other thing to say to you before I
14 accept your sentence that you will impose and hope that you
15 will consider all of the factors in your sentencing.

16 **THE COURT:** So, Mr. Little, do I take it, given your
17 client's statement, that you are not appealing his conviction?

18 **MR. LITTLE:** That's correct, Your Honor.

19 **THE COURT:** So you take full responsibility for what
20 has happened?

21 **THE DEFENDANT:** Yes, Your Honor.

22 **THE COURT:** And you're waiving your rights to appeal?

23 **THE DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** Mr. Little, *voir dire* him on that issue,
25 please.

1 **MR. LITTLE:** Mr. Garcia, you're aware that you have a
2 statutory and constitutional right to appeal your conviction in
3 this case?

4 **THE DEFENDANT:** Yes, Your Honor. Yes, Your Honor.

5 **MR. LITTLE:** Are you aware that only you, no one on
6 your behalf, can waive that right, and that your waiver of that
7 must not only be personal but knowing and intelligent? Are you
8 aware of that?

9 **THE DEFENDANT:** Yes, Your Honor.

10 **MR. LITTLE:** And knowing that it's a personal right
11 that you have and intelligently waiving that and knowing that
12 only you can waive it and that the law entitles it to you, do
13 you nonetheless waive your right to appeal not only the
14 judgment in this case, the verdict, but also whatever sentence
15 Her Honor might impose?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** And collateral proceedings?

18 **MR. LITTLE:** And, Mr. Garcia, you also, by a matter of
19 statute, have the right to appeal -- I'm sorry -- to file what
20 is called a motion under 28 U.S.C. 2255, which is a motion to
21 set aside your conviction and/or sentence in this case, and you
22 would be entitled to pursue that unless it is something that
23 you waive. And, again, this is a waiver that you would have to
24 make personally, and it would have to be knowing and
25 intelligent by you. Only you can make this of waiver. No one

1 can make it for you.

2 Knowing that it's a waiver that only you can make and that
3 you have the right, unless waived, to pursue that motion, are
4 you prepared to waive that right?

5 **THE DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** Anything else with respect to those
7 issues, Ms. Priedeman?

8 **MS. PRIEDEMAN:** Your Honor, I would just inquire if
9 he's had the opportunity to discuss this previously with
10 counsel and if he was satisfied with his representation with
11 current counsel.

12 **MR. LITTLE:** Have you had --

13 **THE COURT:** Go ahead.

14 **MR. LITTLE:** Have you had an opportunity to discuss
15 and consider this matter?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **MR. LITTLE:** And are you satisfied with the
18 representation that you've received from my office since you
19 retained us?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** Okay.

22 Is there anything else from the Government?

23 **MS. PRIEDEMAN:** No, Your Honor.

24 **THE COURT:** Mr. Little, anything else?

25 **MR. LITTLE:** Nothing further.

1 **THE COURT:** Is there any reason why sentence should
2 not now be imposed? Mr. Little?

3 **MR. LITTLE:** No legal cause.

4 **THE COURT:** Mr. Garcia, when young lawyers interview
5 judges and they think they want to be a judge, they always ask
6 us, "Well, what's the most difficult part of your job," and I
7 would say that most of us tell them that it's sentencing. It's
8 sentencing because there is no clear answer, generally.

9 The objectives of sentencing have to consider lots of
10 different -- or they have lots of considerations. So I've
11 heard today from you, from your family, from victims. I sat
12 through that trial. You lied on the stand.

13 One of the things that was not ever said explicitly is
14 deterrence, and it was never explicitly said by your lawyer.
15 It is right that a sentence is unique to you, unique to your
16 circumstance, and under Title 18 of the United States Code at
17 Section 3553, we look at lots of various issues, and a sentence
18 must consider you as an individual, but it also must consider
19 the seriousness of the offense. The sentence must promote
20 respect for the law. It must provide just punishment. And
21 importantly in this case, it must provide deterrence.

22 The Bureau of Prisons has a lot of work to do. It sounds
23 like you know it. Your attorney knows it. People who are
24 testifying before the sentencing commission know it. And those
25 things do conflict with the need for your son to have a father

1 at home and the need for your parents to have their son at
2 home. Right?

3 I've obviously been thinking about your case for a very
4 long time. I will say that I disagree and -- with the
5 guideline calculations. I've never said that -- well, I take
6 that back. I did also disagree with them with respect to how
7 they dealt with crack cocaine.

8 But in this kind of case, the guidelines really do not
9 promote accountability, deterrence, or they're not quite
10 proportionate to sentencing for this kind of crime because
11 people in your position, by the nature of your position, tend
12 to be first-time offenders, so we're always looking at the
13 lowest end of the guidelines.

14 The guidelines really do not address the fact that
15 individuals who are found committing these crimes are doing
16 them to multiple people. You didn't just hurt one person. We
17 know you've hurt all of the people -- the women who testified,
18 and it appears from many of the submissions that I got that it
19 was not -- that they were not the only ones. I don't know that
20 for a fact, but I don't have reason really to disbelieve them.

21 The courts, I think, across the United States are imposing
22 much higher sentences. In the Highhouse case which
23 Judge Gilliam -- Judge Gilliam imposed the sentence, he imposed
24 84 months. In that case, the acts may have been significantly
25 more traumatic. I don't know. I wasn't the judge in that

1 case. I don't know all the facts. But he imposed upwards of
2 80. A Kentucky judge imposed 80. Another judge in the Second
3 Circuit, upwards of 80. Another judge in Virginia, 120. These
4 are extraordinary, extra ordinary, breaches of public trust.
5 They are, in fact, what we call "abuse of power." They are, in
6 fact, abuse of individuals who we expected you to protect.
7 That was the expectation. That was the oath you took.

8 I sentence hundreds of people. I sentence hundreds of
9 people. I expect, and they should be able to expect, that when
10 they go into federal custody, they won't be abused. And you
11 abused them, and there was no one watching you. You were the
12 warden and you were the associate warden. You were supposed to
13 be the check. You were supposed to be the person making sure
14 no one else did that. PREA doesn't work when the warden is the
15 one doing the abusing. How is it supposed to work?

16 I can and I do weigh heavily the fact that you have
17 finally, finally taken responsibility. I have imposed other
18 sentences, or at least one, and in the situation of my
19 colleagues, both of those individuals, both of them, accepted
20 responsibility.

21 You do have a constitutional right to a trial, but aside
22 from that, these victims need to heal. I can tell you that
23 whatever sentence I impose here, they will have trauma well
24 after your leaving. These things go on for years, decades,
25 their trauma.

1 I hope they don't. I hope that they are able to move past
2 this. And when I said to you last week when I told you this
3 was the piece that was missing, I was hoping that you would
4 finally digest what I was talking about. So it works in your
5 favor that you finally are accepting responsibility. And I
6 hope they can move on. But this was a first step, and it was
7 an important step. It was a critically important step.

8 As I looked at the sentencing factors, there were very few
9 which I considered to be mitigating. Unlike Mr. Little, age is
10 not a mitigating factor, in my view. You're in the -- you're
11 about the same age as most people that we send to prison or
12 that I sentence to prison. If I have someone who is very young
13 and I don't believe that their brain is fully formed or someone
14 who is very old, that's where age might play a part, but you
15 knew exactly what you were doing. You are a fully developed
16 individual.

17 You have, other than what you've told me today -- you had
18 no mental or emotional conditions that I knew about. You
19 weren't diminished in terms of capacity by drugs or alcohol.
20 So most of -- most of the factors do not suggest a variance.

21 I do understand that you're very good to your family.
22 Many felons are. And I understand that your son needs you.
23 Many felons have families that need them. So that gets
24 weighed.

25 I do think it's important for you to remember -- and

1 you've waived your appellate rights. I've said this before,
2 you had a constitutional right to a trial. You were given
3 that. You didn't have a constitutional right to lie, make
4 things worse. You don't have a constitutional right to have
5 your lawyer teach you how to lie.

6 Until today, I would have called you an unrepentant
7 predator. You're repenting now. You were a predator, though.
8 I hope those predatory days are done, but that's what you were.

9 It was interesting, among the letters that were sent to
10 me, someone indicated that you presented arrogant, conceited,
11 and narcissistic. They used the word "presented," which
12 suggested to me that somehow they thought you weren't those
13 things, but I certainly thought that you had characteristics of
14 those; right?

15 An exaggerated self, sense of one's own importance or
16 abilities. That's arrogance.

17 An excessive pride in one's self. That's conceit. You
18 seemed to fit that.

19 An excessive interest in admiration of one's self, an
20 inflated sense of self-importance and entitlement, a need to be
21 constantly admired, to expect special treatment, preoccupation
22 with power, success, beauty. Narcissistic.

23 Those all seem to be characteristics of what you were
24 doing out there.

25 When I thought about the victims, originally I didn't know

1 what they were going to say exactly, but I knew they weren't
2 lying because if they'd wanted to lie, they could have made it
3 so much worse.

4 (Cell phone rings in the courtroom.)

5 **THE COURT:** Whoever has that phone better leave the
6 courtroom now.

7 They could have made it worse, and yet what they said --
8 what did they say? They said they were lonely. They liked the
9 attention. And you knew it. You knew it, so you fed yourself.
10 That's what we call exploiting your power for sexual
11 gratification. I knew they weren't lying because they told us
12 that you were showing them pictures of your penis off your
13 phone. We have plenty of pictures of your penis off your
14 phone.

15 I knew they weren't lying because the stories that you had
16 concocted in your head were, frankly, ludicrous, unbelievable.
17 The jury knew it and I knew it.

18 I would agree with Mr. Little in the sense that it appears
19 you entered a sesspool and then did nothing about it. You just
20 went along for the ride and enjoyed the sesspool yourself. You
21 should have done something about it. There could have been
22 more evidence of that.

23 So I don't know everything. I don't know the totality of
24 what's going on out there, but it needs to be stopped. And
25 defendants need to know that accepting responsibility is an

1 important part of getting it to stop, and sentences need to be
2 long enough for them to understand that if they don't stop, if
3 they don't begin to accept responsibility, they will go away
4 for a very, very long time.

5 Pursuant to the Sentencing Reform Act of 1984, it is the
6 judgment of this Court that Ray J. Garcia be committed to the
7 Bureau of Prisons for a term of 70 months. This term consists
8 of 70 months on Counts 1, 2, and 4; 24 months on Count 3, 5, 6
9 and 7; and 70 months on Count 8, all counts to be served
10 concurrently.

11 The Court recommends that the defendant participate in the
12 Bureau of Prisons Sex Offender Specific Treatment Program.

13 Upon release from imprisonment, the defendant shall be
14 placed on supervised release for a term of 15 years. This term
15 consists of 15 years on Counts 1 through 7, 3 years on Count 8,
16 all terms to run concurrently.

17 Within 72 hours of release from the custody of the Bureau
18 of Prisons, the defendant shall report in person to the
19 probation office in the district in which he is released.

20 While on supervised release, you shall not commit another
21 federal, state, or local crime, you shall comply with all
22 standard conditions that have been adopted by this Court,
23 except the mandatory drug-testing program is suspended.

24 You shall comply with the following additional conditions,
25 including that the defendant shall comply with third-party risk

1 notification.

2 You shall not have any contact with the identified victims
3 in this case -- Melissa, Maria, and Rachel -- or any other
4 current or former federal inmate unless otherwise directed by
5 probation.

6 You must pay restitution, fines, and special assessments
7 imposed by this judgment that remain unpaid at the commencement
8 of the term of supervised release.

9 You must cooperate in the collection of DNA as directed by
10 probation.

11 You must submit your person, residence, office, vehicle,
12 or any property under your control, including computers, cell
13 phones, and other electronic devices, to search whenever asked
14 by a United States Probation Officer at a reasonable time and
15 in a reasonable manner based upon reasonable suspicion of
16 contraband or evidence or a violation of a condition of
17 release. Failure to submit to such a search may be grounds for
18 revocation. You must warn residents with whom you live that
19 you are subject to that provision.

20 You must not own or use a computer or computer-related
21 device without prior approval of probation. "Computer" or
22 "computer-related device" means any electronic device capable
23 of creating, accessing, storing, viewing, or transmitting
24 material with visual depictions of sexually explicit conduct.
25 "Computer" or "computer-related device" includes, but is not

1 limited to, desktops and tower computers, laptops, smartphones,
2 security cameras such as nanny cams or cameras linked to
3 doorbells, USB or thumb drives, gaming platforms, compact
4 disks, and external hard drives.

5 I understand that in today's world, that is virtually
6 impossible. The point is you need to check with probation
7 first to make sure that we have appropriate controls over what
8 it is you're doing to ensure you do not violate any more laws.

9 Do you understand?

10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** As directed by probation, you must enroll
12 in the probation office's Computer and Internet Monitoring
13 Program. You must abide by the requirements of that program
14 and its Acceptable Use Contract.

15 You must not access the Internet or any online computer
16 service at any location, including employment, without the
17 prior approval of probation. "Online services" includes any
18 Internet service provider or any public or private computer
19 network. You must warn your employer of restrictions regarding
20 your use as directed by probation.

21 You must consent to probation's conducting periodic,
22 unannounced examinations of your computer equipment which may
23 include retrieval and copying of all data from your computer
24 and any peripheral device to ensure compliance with this
25 condition and/or removal of any such equipment for the purpose

1 of conducting more thorough inspection.

2 You must consent to the installation of any hardware or
3 software as directed by probation to monitor your Internet use.

4 You must not possess or use any data encryption technique
5 or program.

6 You must not access via the Internet or otherwise any
7 pornography or other materials depicting sexually explicit
8 conduct as defined at Title 18 of the United States Code at
9 Section 2256, subsection (2), without prior approval of
10 probation.

11 Your employment must be approved by probation. Any change
12 in employment must be preapproved by probation. You must
13 submit any name and addresses of proposed employers to the
14 probation office at least 10 days prior to any scheduled
15 change.

16 Your residence must be approved by probation and any
17 changes thereto must be preapproved. You must submit any
18 request at least 10 days prior to any scheduled change.

19 You must register with the state sex offender registration
20 agency as required by state law. You must provide proof of
21 registration to probation within three days of release from
22 imprisonment and placement on supervision in any state that has
23 adopted the requirements of the Sex Offender Registration and
24 Notification Act.

25 You must also comply with all requirements as directed by

1 probation, the Bureau of Prisons, or any state sex offender
2 registration agency in which you reside, are a student, or were
3 convicted of a qualifying offense.

4 You must participate in sex-offender treatment as directed
5 by probation. You are required under the law to pay all or
6 part of the cost of such treatment in an amount not to exceed
7 the cost of the treatment and as directed by probation.
8 Probation will determine the proper copay. And you may release
9 any previous mental health evaluations to the provider.

10 As part of the program, you must submit to polygraph
11 testing as recommended by the treatment provider. However, you
12 do retain your Fifth Amendment right under the Constitution to
13 refuse to answer questions during the course of the treatment,
14 absent a grant of use and derivative use immunity.

15 As part of the treatment program, you must submit to
16 psychological testing as recommended by the treatment provider.

17 You shall pay a mandatory special assessment of \$800, \$100
18 per count. The Court does not impose a fine in this case for
19 the reasons outlined in the Defense memo.

20 With respect to restitution, I am prepared to order both
21 requests, but it appears to me I don't know whether additional
22 requests are coming in or should come in with respect to
23 restitution, and under the code, I can delay a restitution
24 order for, I think, 60 or 90 days. Comments?

25 **MR. LITTLE:** Your Honor, with respect to a restitution

1 hearing, the Defense would agree to an approximate 90-day
2 continuance.

3 **MS. PRIEDEMAN:** That's fine, Your Honor.

4 **THE COURT:** Do you anticipate anything more?

5 **MS. PRIEDEMAN:** I don't anticipate -- my understanding
6 is only the three charged victims can seek restitution under
7 the statute.

8 **THE COURT:** Right, but I only have two.

9 **MS. PRIEDEMAN:** Right. The third victim has informed
10 me that she's not seeking restitution.

11 And just for the record, Your Honor, for Melissa's
12 request, she provided an approximation, so the number that I
13 had reached was essentially taking the low end of that
14 approximation.

15 **THE COURT:** What was the high end?

16 **MS. PRIEDEMAN:** The high end was \$100 to \$200 dollars
17 per session, so it would essentially be doubled.

18 **THE COURT:** Do you want to meet and confer on that, or
19 do you want me to order it now?

20 (Counsel confer off the record.)

21 **MS. PRIEDEMAN:** Your Honor, the parties have agreed to
22 7500 for each -- 7500 for each for therapy sessions,
23 Your Honor.

24 **THE COURT:** So 1500 total -- or 15,000 total?

25 **MS. PRIEDEMAN:** Yes, Your Honor.

1 **MR. LITTLE:** That's correct, Your Honor.

2 **THE COURT:** Restitution is ordered in the amount of
3 15,000.

4 I believe it is much more beneficial to have the amounts
5 paid directly to the victims than back to the U.S. government
6 in this particular case, so I'd rather have his resources go to
7 that issue.

8 As I've mentioned multiple times, the request to remand
9 today is denied. The record should be clear that I could have
10 and perhaps I should have remanded him today. Under Title 18
11 of the United States Code at 3143, in my view, any appeal would
12 have been for purposes of delay, but he's waived his right to
13 an appeal, and I will afford him the ability to put his affairs
14 in order.

15 It seems to me typically BOP needs at least 30 days to
16 find an appropriate placement. The other consideration that I
17 had was that had I remanded him today, he would have gone
18 straight to Santa Rita as opposed to the Bureau of Prisons, and
19 it's not clear to me that Santa Rita could accommodate this.

20 So looking at my calendar, May 19th.

21 **MS. PRIEDEMAN:** That's fine, Your Honor.

22 **THE COURT:** May 19th?

23 **MR. LITTLE:** Yes, Your Honor.

24 **THE COURT:** All right. So you must appear May 19th.
25 If you do not hear from BOP in terms of a placement at that

1 time, then you shall report in this courthouse downstairs at
2 the U.S. Marshals office before noon on Friday, May 19th.

3 Do you understand?

4 **THE DEFENDANT:** Yes, Your Honor.

5 **THE COURT:** Okay.

6 For the victims, I do hope that you can move on. I can
7 tell you that this is now closure. The fact that he waived his
8 constitutional rights to an appeal, to collateral proceedings,
9 to a new trial, which -- well, that was denied, but the new
10 trial would have been the request -- it means it's over. With
11 respect to him, it's over. And I will be watching him for the
12 15 -- well, maybe not all of 15 years. I don't know how long
13 I'll be here, but certainly once he's out, I will be watching.
14 I'm not going away.

15 I hope you all can move on. I know it's tough, but this
16 is a step in the right direction.

17 Anything else?

18 **MS. PRIEDEMAN:** No, Your Honor. Thank you.

19 **MR. LITTLE:** Nothing further, Your Honor. Thank you.

20 **THE COURT:** We're adjourned.

21 (Proceedings adjourned at 11:47 a.m.)
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, March 24, 2023

Pamela Batalo Hebel

Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR
U.S. Court Reporter